

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 791 of 1994

Between:

Smt.M.Sivamma W/o.late M.Mallaiah
Rajoli, Wadeepalli Mandal, Mahabubnagar District

..... PETITIONER

AND

- 1 The Government of Andhra Pradesh rep.by its Secretary
Revenue Department Secretariat Buildings, Hyderabad.
- 2 The District Collector Mahabubnagar
- 3 The Assistant Collector Gadwal
- 4 The Mandal Revenue Officer, Waddepalli Mandal
Mahabubnagar District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a direction to the respondents for issue of the Ryotwari Patta and Title Deeds with absolute occupancy rights with respect to Ac.1-07 gts. of land in Sy.No.450 of Rajoli Village, Waddepalli Mandal, Mahabubnagar District and record her name as pattadar in the village Account and deliver vacant possession of the entire land to the petitioner by vacating any encroachers.

(Prayer amended as per the Court order dated 25-10-2004 made in W.P.M.P.No.17383 of 2003)

Counsel for the Petitioner:MR.P.M.GOPAL RAO

Counsel for the Respondents : GP FOR REVENUE (Assignment)

The Court made the following :

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ORDER :

The case of the petitioner, in brief, is as follows. One late Sivayya, father-in-law of the petitioner was the owner of the land admeasuring Acs.3-11 gts. in Survey No.448 of Rajoli Village, Waddepalli Mandal, Mahabubnagar District (at relevant time in Alampur Taluk). In 1955 the said land was utilized for the construction of school building on an understanding that the donor of the land will be assigned an equal extent of land in Survey Nos.450 and 452 of Rajoli Village. During the life time of Sivayya, an extent of Acs.2-04 gts. in Survey No.452 was given to him. It appears, the land changed hands and in this writ petition no controversy arises thereto.

On a request made by late Sivayya, for assignment/allotment of balance of land i.e., Ac.1-07 gts., on 29-5-1955 the Tahsildar of Alampur addressed a letter informing that an extent of Ac.1-07 gts. in Survey No.450 would be assigned to him. By reason of the said letter, the petitioner's father-in-law occupied the land and he was enjoying the land during his life time, after his death petitioner's husband late M.Mallaiah and after the death of M.Mallaiah, the petitioner, have been in possession of the land. Furthermore, during the life time of Sri M.Mallaiah, the Tahsildar, Alampur, initiated action under the provisions of the Andhra Pradesh Land Encroachment Act, 1905 to evict the occupants. Assailing the same, late Mallaiah filed W.P.No.3517 of 1978. This Court, having regard to the facts and circumstances, came to the conclusion that the provisions of the Andhra Pradesh Land Encroachment Act have been improperly invoked, and accordingly allowed the said writ petition by order dated 6-11-1980 declaring that the respondents/revenue officials cannot invoke the provisions of the said Act. Presumably, on the strength of the said judgment, the petitioner sold an extent of Ac.1-00 of land in Survey No.450 to one Sri K.Umapathi. The said K.Umapathi and the petitioner herein made applications to fourth respondent for grant of patta with absolute rights. As no orders were passed, the present writ petition is filed seeking a direction to the respondents to grant D-Form patta to the petitioner in respect of the land admeasuring Ac.1-07 gts. in Survey No.450 of Rajoli Village. While the matter is pending before this Court, the Mandal Revenue Officer, by order dated 11-9-1996 assigned an extent of Ac.0-07 gts. of land in Survey No.450 to the petitioner purportedly in accordance with the rules made by the Government in G.O.Ms.No.1406, dated 25-7-1958 read with G.O.Ms.No.1724, dated 2-8-1958. The

assignment was made subject to the condition of inalienability and other conditions. In view of the same, the petitioner filed W.P.M.P.No.17383 of 2003 praying this Court for amending the prayer, thereby seeks a direction to the respondents to issue Ryotwari Patta and title deeds with absolute occupancy right to the petitioner in respect of Ac.1-07 gts. of land and deliver vacant possession of the entire land to the petitioner by evicting the encroachers, who appears to have encroached the land during pendency of the writ petition.

The respondents filed counter affidavits in June, 2004 as well as October, 2004 and produced the entire record before this Court. In both the counter affidavits, the various facts and circumstances leading to filing of this writ petition have not been denied. Indeed, in the counter affidavit filed before this Court by the Mandal Revenue Officer sworn on 4-10-2004, the case of the petitioner, as admitted, is in the following terms.

.....Having seen the actual possession of the said K.Umapathi to an extent of Ac.1-00 gts. in Sy.No.450, the said Mandal Revenue Officer had issued Ryotwari Patta Pass Book and Title Deeds to the said K.Umapathi, and Patta Pass Book was also delivered to the extent of balance extent Ac.0-07 gts., to the petitioner in the year 1996. Since then the petitioner has not objected for the same by filing any petition to the Mandal Revenue Officer or to the respondents, saying that she is disputing the said sale and she has not sold the property or somebody has encroached the land. **The respondents have never questioned the right of the petitioner to sell the land. Having verified the records that this land was given to the donor by way of exchange of his land for the High School.....**

After hearing the submissions of the learned counsel for the petitioner as well as the learned Assistant Government Pleader for Revenue (Assignment) and perusing the affidavits and counter affidavits filed in the case, it becomes clear that in exchange of the land donated by the father-in-law of the petitioner, the respondents agreed to allot equal extent of land, that during his life time, Sri Sivayya was allotted Acs.2-04 gts. of land and subsequently the petitioner, who was in possession of Ac.1-07 gts. of land in Survey No.450, was given patta and that the said patta though mentions condition of inalienability and other conditions is an absolute patta and nothing prevents the petitioner to deal with the property as she likes. Indeed, as stated in the counter affidavit, which is not denied nor disputed, the petitioner already sold an extent of Ac.1-00 of land to Sri K.Umapathi to whom the Pattadar Pass Books and title deeds were issued. In the affidavit filed before this Court, the petitioner categorically stated that she is in possession of the property admeasuring Ac.0-07 gts. Across the Bar, learned counsel for the petitioner also stated that the petitioner has no objection if a title deed is given to Sri K.Umapathi to whom she sold the property. The same is recorded.

In view of the subsequent events, this writ petition is disposed of directing the Mandal Revenue Officer, Waddepalli Mandal, to issue proper allotment order/patta to the petitioner in respect of Ac.0-07 gts. of land in Survey No.450 of Rajoli Village. If the land is found to be encroached upon, it shall be open to the petitioner to make a representation to the Mandal Revenue Officer, who shall take necessary steps to

evict the encroachers after due process of law, so that the petitioner can enjoy the land given to her. There shall be no order as to costs.

(V.V.S. RAO, J.)

25-10-2004.

Msr.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Secretary to Government, Revenue Department,

Govt.of A.P., Secretariat Buildings, Hyderabad.

2 The District Collector, Mahabubnagar

3 The Assistant Collector, Gadwal

4 The Mandal Revenue Officer, Waddepalli Mandal,
Mahabubnagar District

5. 2CCs to G.P. for Revenue (Assignment), High Court Buildings,

Hyderabad.

6. 2CD copies

HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.791 of 1994

25-10-2004.

(Msr)